IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10027 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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JB MAKWANA
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR TR MISHRA assisted by MR UT MISHRA for the Petitioner
MR HEMANT MAKWANA, ASSISTANT GOVERNMENT PLEADER for Respondent Nos.1 and 4
NONE for Respondent Nos.2 and 3

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 19/01/2007

ORAL JUDGMENT

1. By filing this petition, the petitioner has prayed that appropriate writ, order or direction may be issued declaring the impugned action on the part of respondent

No.2, in delaying fixation of salary of the petitioner and to deny him the consequential benefits. The main grievance of the petitioner in this petition is regarding fixation of salary by respondent No.2. This petition is filed in the year 1994.

2. The petitioner had initially joined the services of the State Government in Class-III post, as Vaidhkiya Adhikari. Thereafter, after giving resignation, he joined services on Class-II post as Medical Officer in the State services. Since that time as his salary was not properly fixed, this petition has been filed by the petitioner.

However, during the pendency of this petition, there is a subsequent development to the effect that the petitioner has now already retired from the aforesaid Class-II post in the year 1998. In the meanwhile, so far as main prayer in the petition is concerned, the fixation has already been made.

3. However, Mr.T.R.Mishra, learned Advocate for the petitioner submitted that on his superannuation, his pension is not properly fixed, as the same is fixed treating his services between 1979 to 1998, i.e. at the time when he was holding Class-II post. Mr.Mishra further submitted that while fixing the pension, his past

service of the year 1967 to 1979 is not taken into consideration. Of course this is a subsequent development after filing the petition, therefore, the same is not finding place in the petition.

4. Learned Assistant Government Pleader, Mr.Makwana after taking instructions from the Officer, however pointed out that at the time when the petitioner joined his services in Class-II post in the year 1979, he was appointed on substantive post and at the time of joining his duty, he has already resigned from the earlier post of Vaidhkiya Adhikari, i.e. Class-III post in Panchayat services. He submitted that in that view of the matter, in view of the resignation, the petitioner's earlier service cannot be counted for the purpose of fixation of pension.

5. Mr.Mishra, however, submitted that this was merely a technical resignation, as the petitioner continued in the services of the State Government itself and there was no break in the service, as by tendering resignation on 04.02.1979, he resumed his duty on 05.02.1979. He submitted that in that view of the matter, past services of the petitioner should be considered as continuous services as there was no break in service.

6. To this, learned Assistant Government Pleader,

Mr.Makwana submitted that so far as this aspect is concerned, this is a subsequent development after filing of the petition.

7. Mr.Mishra, learned Advocate for the petitioner submitted that the petitioner would like to make a detailed representation to the concerned department pointing out aforesaid facts. The petitioner is permitted to make representation to the State Government with a prayer that his past services between 1967 to 1979, i.e. at the time when he was holding Class-III post may be counted for the purpose of pensionary benefits and he gave resignation in view of a technical reason and the same may be treated as technical resignation and it should not be treated as break in service. Mr.Mishra further submitted that the Government has powers to condone such break in view of the provisions of the Bombay Civil Services Rules.

8. It will be open to the petitioner to make representation to the appropriate authority giving full particulars about service history. If any such representation is made, the appropriate authority may take appropriate decision in accordance with law and may consider whether earlier services of the petitioner when he was in Class-III can be counted for the purpose of

pension. If there is any power to give relaxation or to treat this as a special case, the Government can consider the same as deemed fit.

However, since the factual background is not available before this Court, as this aspect arose subsequently, the Government may pass appropriate order after considering the documents on record as deemed fit and as stated above, in case it has power to give relaxation or to treat it as a special case, the same may also be considered. The appropriate authority may communicate its decision to the petitioner within a period of 2 months from the date of receipt of such representation. However, the petitioner may make such representation expeditiously without unreasonable delay.

If ultimate decision is against the petitioner, it will be open to the petitioner to challenge the same in accordance with law.

9. In view of the aforesaid directions, Mr.Mishra wants to withdraw this petition. Permission is granted with the liberty to challenge the final decision if the same is against the petitioner. Rule is discharged with no order as to costs.

(P.B.MAJMUDAR, J.)

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